

OFFICE OF THE ATTORNEY GENERAL

92-00329



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Honorable Donald R. Cook
Judge of Probate
Perry County
Courthouse
Washington Street
Marion, Alabama 36756

Probate Judges - Counties -
Clerks - Employers, Employees,
Employment

Under Act No. 92-472, the Perry County Commission may transfer an employee from the probate judge's office to the tax assessor's office. However, if the county commission transfers one of the clerks hired for the probate judge under Act No. 88-819, a replacement selected by the judge must be hired for the probate judge. The probate judge and county commission should work together in this matter.

Dear Judge Cook:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTION

Does the Perry County Commission have the authority to transfer a clerk from the probate judge's office to the tax assessor's office and to determine who will be transferred upon the creation of the motor vehicle license and title division within the tax assessor's office?

FACTS, LAW, AND ANALYSIS

Act No. 92-472, 1992 Regular Session, created a motor vehicle license and title division within the office of the tax assessor of Perry County. Regarding personnel for this division, Section 1 of Act No. 92-472 provides:

"The county commission shall also provide the clerks and other assistants for the tax assessor, as shall be necessary from time to time, for the proper and efficient performance of the duties of his or her office or may transfer existing employees who are employed by the county. The compensation of the clerks and assistants shall be established by the county commission and be paid out of the general fund of the county in the same manner as other county employees are paid."

According to this provision, the Perry County Commission is to provide for the necessary clerks and assistants for the tax assessor, and it may transfer existing employees of the county to the tax assessor's office.

Act No. 88-819, Acts of Alabama 1988, states that the Perry County Commission shall provide a chief clerk and two additional clerks to the probate judge of that county to assist him in the performance of his duties. The probate judge is to select the clerks, while the county commission is to set their salaries at not less than \$764.04 per month to be paid out of the county general fund.

The Perry County Commission is required by law to furnish the probate judge with a chief clerk and two additional clerks. Thus, although the county commission may, under Act

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No. 92-472, transfer existing county employees to the tax assessor's office, it cannot transfer one of the clerks hired for the probate judge under Act No. 88-819, unless the probate judge is permitted to select another individual to replace the clerk which has been transferred. If the county commission wishes to transfer one of the existing clerks of the probate judge's office and hire a replacement, the probate judge, under Act No. 88-819, is authorized to select the replacement. In any event, the probate judge and county commission should work together in this matter.

CONCLUSION

Under Act No. 92-472, the Perry County Commission may transfer an employee from the probate judge's office to the tax assessor's office. However, if the county commission transfers one of the clerks hired for the probate judge under Act No. 88-819, a replacement selected by the judge must be hired for the probate judge. The probate judge and county commission should work together in this matter.

I hope this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

JIMMY EVANS
Attorney General

By:



JAMES R. SOLOMON, JR.
Chief, Opinions Division

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